COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion pursuant to G.L. c. 159, §105 and G.L. c. 164, §76 to investigate increasing the penetration rate for discounted electric, gas and telephone service	)	D.T.E. 01-106

ATTORNEY GENERAL'S MOTION FOR RECONSIDERATION

I. INTRODUCTION

Pursuant to 220 C.M.R. 1.11(10) and Department of Telecommunications and Energy ("Department") precedent, the Attorney General seeks reconsideration of the Department's October 14, 2005 decision ("Order") creating a new cost recovery tariff. The Attorney General asks the Department to reconsider whether: (1) the cost recovery mechanism established in the Order is the appropriate mechanism for companies to recover costs associated with low income discount enrollment; (2) the new mechanism conforms to the Department's directives in D.T.E. 01-106-B; (3) the disparity in recovery amounts among utilities renders the tariff defective; and (4) the use of the prime interest rate and the lack of refund of any baseline amount to ratepayers serves the public interest.

II. PROCEDURAL HISTORY

On August 8, 2003, the Department established a computer matching program for electric and gas distribution companies to facilitate the enrollment of eligible customers in utility discount rate programs. *Investigation re: Discount Program Participation Rate*, D.T.E. 01-106-A (2003). On December 6, 2004, after Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a/ NSTAR Electric, and NSTAR Gas

Company filed a motion to reconsider or to clarify certain issues regarding the implementation of the computer-matching program, including the establishment of a cost recovery mechanism, the Department clarified how the companies will recover any revenue shortfall from the implementation of the computer-matching program. *Investigation re: Discount Program Participation Rate*, D.T.E. 01-106-B (2004). The Department directed the companies to propose a reconciliation mechanism based on the difference between the total forecasted lost revenues associated with the low-income discount and the amount of the low-income subsidy approved in the company's last rate case or settlement, adjusted for any changes in sales and the number of low-income customers as of the effective date of the computer matching program. *Id*., pp. 9-10.

On August 30, 2005, the Department issued a Notice of Filing and Public Hearing ("Notice") on the tariffs proposed separately by NSTAR Electric, in docket D.T.E. 05-55, and Massachusetts Electric Company and Nantucket Electric Company (together "National Grid"), in docket D.T.E. 05-56, to recover costs related to the low-income discount rate computer matching program. The Department suspended the proposed tariffs for investigation until November 1, 2005 and consolidated the investigation of these tariffs (D.T.E. 05-55 and D.T.E. 05-56) with its investigation of electric and gas company compliance with the directives contained in D.T.E. 01-106-B. Immediately following the public hearing on September 16, 2005, the Hearing Officer held a technical conference[1] to discuss the various elements of the proposed cost recovery tariffs. On September 27, 2005, the hearing officer issued a Memorandum detailing an alternative cost recovery mechanism and requesting comments from the parties. After the parties submitted

[1] The Department had not previously given notice to the parties of this technical conference and did not record a transcript of it.

comments, the Department issued its Order adopting the alternative cost recovery mechanism.

III. STANDARD OF REVIEW

The Department may grant reconsideration when its treatment of an issue was the result of mistake or inadvertence. *Massachusetts Electric Company*, D.P.U. 90-261-B, p. 7 (1991). The Department also may grant reconsideration of previously decided issues when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. *North Attleboro Gas Company*, D.P.U. 94-130-B, p. 2 (1995); *Boston Edison Company,* D.P.U. 90-270-A, pp. 2-3 (1991). A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact on the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. *Commonwealth Electric Company*, D.P.U. 92-3C-1A at 3-6 (1995).

IV. ARGUMENT

The Attorney General fully supports the efforts of the Department to increase the participation of eligible low-income customers in discounted electric and gas service through the computer matching program and other means. The Department, however, should not allow the companies to charge customers for costs currently included in base rates, as will be the case for some companies under the current Order, nor should the Department increase rates without a full investigation under G. L. c. 194, §94, to determine whether the resulting rates are just and reasonable. The Department should reconsider the cost recovery mechanism described in the Order in light of the fact that (1) the change in the companies' reconciling tariffs require full

evidentiary hearings; (2) Department precedent requires that companies establish a baseline using the data from the last rate case; (3) there is no consistent, uniform cost recovery among the companies; (4) if allowed to use only data from the prior twelve months to establish a baseline, some companies will be over-collecting costs with no reimbursement to their non-low-income customers; and (5) the use of the prime interest rate is more harmful to the non-low income customers.

A. A Change in the Formula of the Companies' Reconciling RAAF Tariffs Requires Full Evidentiary Hearings.

The Department issued its Order directing companies to file Residential Assistance Adjustment Factors ("RAAF") that conformed to the Department's alternative cost recovery mechanism ("Alternative Mechanism").[2] The Alternative Mechanism requires changes to the RAAF formula used to calculate the companies' low-income discount costs. The Department ordered the companies to file RAAFs consistent with the order immediately. The Department's order, however, did not provide for an adjudicatory proceeding for each company. The required changes to the RAAFs are changes that in the tariffs that increase rates. Any proposals to initiate formula reconciling tariffs that increase rates must be subject to a hearing before the Department under G. L. c., 164, § 94, to set just and reasonable rates. *Consumers Organization For Fair Energy Equity, Inc. v. D.P.U.,* 368 Mass. 599, 606 (1975) ("[cost adjustment] clauses were designed precisely to avoid [§94] proceedings *except where changes were being proposed in the*

[2] The Department's alternative cost recovery mechanism requires all companies to file tariffs that would (1) calculate an adjustment factor on a prospective basis; (2) accrue interest on under- or over-recoveries at the prime rate; (3) establish a baseline amount of low-income discount collected through base rates for twelve months ending June 30, 2005; and (4) on or after July 1, 2005, recover any amount of low-income discount in excess of the baseline amount through the RAAF. Order, p. 8, n. 3.

clauses themselves" (emphasis added)).

Therefore, the Department should hold evidentiary hearings in order to evaluate each of the companies' proposed RAAF tariffs and determine that each proposal will produce just and reasonable rates. *Consumers Organization For Fair Energy Equity, Inc. v. D.P.U.,* 368 Mass. at 606.

B. There Is No Uniformity in the Companies' Cost Recovery Mechanisms.

The cost recovery mechanisms resulting from the Order do not provide a level playing field for the companies.[3] The various mechanisms are not revenue neutral, so that some companies reap a profit and others face a loss from implementing the matching program. The Department's order should not create a disadvantage for some companies and a windfall for others.[4] The Department should assure that the cost recovery mechanisms are revenue neutral for all companies so that some companies are not at a disadvantage.

C. Department Precedent Requires a Baseline Reflecting Test Year Data.

Companies currently collect the revenue foregone because of the low-income discount through non-low-income customers' base rates established in each company's last rate case. In D.T.E. 01-106-B, the Department ordered the companies to calculate the adjustment based on the

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[3] The effective value of the low-income discount also varies from company to company. Despite the Department's efforts to standardize the low-income rate, there have been changes to the value of the companies' discounts since their last base rate cases. As a result, disparities are apparent in the value of the discount rate in different service territories across the Commonwealth. All customers should receive the same value regardless of their location.

[4] On October 31, 2005, the Department stamp "approved" individual RAAF tariff provisions for the utilities. The language contained in the various tariffs is not uniform and is overly broad, allowing costs other than lost low-income discount revenues to be recovered. New England Gas Company, MDTE Nos. 201A and 301A, section 1.08 ("All costs associated with the Company's mechanism for recovery of lost revenue…"). The Department should rescind its approval and require companies to file uniform tariffs in compliance with the Department's final order.

difference between the total forecasted lost revenues associated with the low-income discount and the amount of the low-income subsidy approved in the company's last rate case or settlement, adjusted for any changes in sales and the number of low-income customers as of the effective date of the computer matching program. D.T.E. 01-106-B, pp. 9-10. In this most recent Order, the Department ordered each company to establish a baseline amount of the low-income discount for the 12 months ended June 30, 2005, a period unrelated to any of the affected companies' most recent base rate cases. Order, p. 10. This latest methodology is inconsistent with the Department's own order in D.T.E. 01-106-B because it removes the companies' base rates established in their last rate case or settlement as the starting reference point for the formula.

The Attorney General asked the Department to set the baseline amount at the amount of low-income discount included in the base rates in each company's last rate case, adjusted for any increase in sales. Attorney General Comments, pp. 2-3, September 30, 2005. D.T.E. 01-106-B, pp.9-10. *See Commonwealth Electric Company, Cambridge Electric Light Company, Boston Edison Company, d/b/a/ NSTAR Electric and NSTAR Gas Company*, D.T.E. 03-47 (Department ordered company to include in the reconciling adjustment mechanism the difference between the amount the utility was collecting in rates for the expense and the expense it was required to book pursuant to financial accounting rules); *Commonwealth Electric Company, Cambridge Electric Light Company, Boston Edison Company, d/b/a/ NSTAR Electric and NSTAR Gas Company*, D.T.E. 03-47-A, p. 19 (2003)(amount collected in rates was the expense amount included in the filed cost of service in the utility's last rate case).

The Department should apply its precedent to this case and require the companies to use

the amounts collected in rates as the baseline for the reconciliation adjustment. *Commonwealth Electric Company, Cambridge Electric Light Company, Boston Edison Company, d/b/a/ NSTAR Electric and NSTAR Gas Company*, D.T.E. 03-47-A, p. 19 (2003). "A party to a proceeding before a regulatory agency such as the Department has a right to expect and obtain reasoned consistency in the agency's decisions." *Boston Gas Company v. Department of Public Utilities*, 367 Mass. 92, p. 104 (1975). The Department acknowledged that the appropriate ratemaking treatment was for the companies to calculate the adjustment based on the difference between the total forecasted lost revenues associated with the low-income discount and the amount of the low-income subsidy approved in the company's last rate case or settlement, adjusted for any changes in sales and the number of low-income customers as of the effective date of the computer matching program. D.T.E. 01-106-B, pp. 9-10. This methodology, however, is not the one that appears in the Order.

The expense in this case is not the amount of the discount that the Company is currently giving to existing low income customers. Rather, the low income discount expense is recovered from other (non-low income) customers as an expense adder to their costs of service in the last rate case. Furthermore, the recovery of this expense from the other customers has grown with the growth in sales since the last rate case. The Department should reconsider its Order and require the companies (1) to use the discount recovered from non-low income customers as the amount recovered in rates; (2) to use the expense amount from the last base case as the starting point for the measurement as it found in D.T.E. 03-47-A, and (3) to increase that amount as measured by the amount in the last rate case for the growth in sales since that time.

D. Some Companies Will Over-Collect at the Expense of the Non-Low-Income

Customers.

The Department does not require companies to refund any amounts to ratepayers if a company's total low-income discount in a given year is below the baseline amount. Order, p. 10. Because the companies have been recovering the low-income discount through non-low-income customers' base rates since their last rate case or settlement, some companies have been over-collecting as the number of customers receiving the discounted rate has declined. *See* Companies Responses to DTE-1-1. This over-collection is further exacerbated by the Department's decision not to require companies to refund any amounts below the baseline amount, an arbitrary calculation, to ratepayers. With this order, the Department is allowing the companies' shareholders to profit at the expense of their non-low-income customers. It should not matter that this cost recovery mechanism is designed as a short-term solution that the Department will further address in a company's next general distribution rate case. Indeed, some companies have only recently started long-term rate plans and will not have a rate case for several years. *See Boston Gas Company*, D.T.E. 03-40 (2003); *Massachusetts Electric Company and Nantucket Electric Company*, D.T.E.03-126/03-124/02-79 (2004); *Berkshire Gas Company*, D.T.E. 01-56 (2001). The cost recovery mechanism should leave the utilities economically indifferent and revenue neutral. *See Investigation Re: the Provision of Default Service*, D.T.E. 02-40-B (2003). The Department should reconsider the cost recovery mechanism and require the companies to refund amounts to customers if the total low-income discount in a given year is below the baseline amount.

E. The Interest Should Accrue At the Customer Deposit Rate, Not the Prime

Interest Rate.

In its Order, the Department directed the companies to reconcile over- or under-recoveries in the following year, with interest costs accruing at the prime interest rate. The prime interest rate is a much higher rate than the customer deposit rate[5] and will allow the companies to profit even further from their non-low-income customers, who subsidize the low-income discount. Generally, utilities borrow in the short term at rates much lower than prime[6], more similar to the customer deposit rate. Also, interest costs accrue in other reconciliation mechanisms at the customer deposit rate. *Cambridge Electric Light Company/Commonwealth Electric Company*, D.T.E. 97-111, pp.76-77 (1998). Again, "[a] party to a proceeding before a regulatory agency such as the Department has a right to expect and obtain reasoned consistency in the agency's decisions." *Boston Gas Company v. Department of Public Utilities*, 367 Mass. 92, p. 104 (1975). The Department should reconsider the use of this higher interest rate and order all of the companies to apply the lower customer deposit rate.

[5] The interest rate on customer deposits is defined in 220 C.M.R. 26.09(1) as that rate paid on two-year United State Treasury notes for the preceding 12 months ending December 31 and is lower than the prime rate. Although the use of the prime rate applies to gas distribution companies (*see* 220 C.M.R. 6.08(2)) and not electric distribution companies, the Department ordered that when applying interest to any RAAF over- or under-recovery, both gas and electric companies would use the prime interest rate. D.T.E. 01-106-C, p. 12.

[6] Blackstone Gas Company may be an exception.

V. CONCLUSION

The Department should allow this motion and reconsider the issues raised in this motion and grant the relief requested.

Respectfully Submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

By: _____

Colleen McConnell
Assistant Attorney General
Public Protection Bureau
Utilities Division
One Ashburton Place
Boston, MA 02108

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